

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4469 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYABEN J THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4469 of 1997
MR RD PATHAK for Petitioner
Mr.S.T.MEHTA, ASSTT/GOVERNMENT PLEADER for Respondent No. 1, 6, 7
MR DS NANAVATI for Respondent No. 3
MR DA BAMBHANIA for Respondent No. 4
NANAVATI & NANAVATI for Respondent No. 5

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 10/02/99

ORAL JUDGEMENT

The petitioner is a teacher serving with respondent No.5 college administered by respondent No.4- Gujarat Law Society. According to the procedure of payment of dues to the persons employed by the colleges administered by respondent No.4, the concerned college collects the fees and other dues charged by it and are remitted to the State of Gujarat and in turn, submits bill of payment of its employees to the State Government which makes payment payable to the employees of the college. The petitioner, according to the date of superannuation completed 60 years on 31.1.1986. According to the Gujarat University rules to which the college was affiliated, a teacher completing the age of superannuation in the first session is to superannuate on 31st October and those superannuating in the later session retires on 14th June of the session. In the present case, the petitioner completed aged of 60 years on 14.1.1986, during the second session. Session during which the petitioner retired was extended upto 7.7.1986 and, therefore, in terms of the University circular dated 17.6.1986, the petitioner actually superannuated on 7.7.1986. There was a dispute between the college authority and the Government about making of payment to the teachers for the period between the date they attained the age of superannuation and the date they were actually made to retire on completion of the session. That was made subject matter of Special civil application No. 1064 of 1986 in which the college and the Gujarat Law Society, respondents Nos. 4 and 5 in this petition had asked for relief against the State government that they should honour their pay bills in respect of the employees who have retired at the end of the session and release dues according to that . Interim relief in respect of the present petitioner who was also party to that petition for releasing payment of salary from 14.1.1986, the date of attaining 60 years of age to 14.6.1986 was also prayed for and was granted by this court vide order dated 25.2.1986 . As will be noted, there is no dispute now to that part of the controversy viz. about responsibility of State Government to make payment of salary bills of college teaching staff until he actually superannuates at the end of session, in the present case, upto 7.7.1986.

During the pendency of the petition, retiral benefits payable to the petitioner were computed by the Director of Provident Fund and Pension vide communication dated 5.2.1991. The amount payable was determined at Rs. 28,020/- on account of gratuity out of which Rs. 20,000/- were retained, because of pending dispute between the college and Gujarat Law Society on one hand and the State on the other about payment of salary from

1.2.1986 to 7.7.1986 and since that has not been resolved, the amount payable on account of gratuity has been retained. This appears from the communication between the Principal of the college and the Director of Education dated 7.3.1991 at Annexure A/9. About this fact also, there is no dispute. As this amount was retained, the petitioner moved civil application No. 687 of 1982 in Special civil application No. 1064 of 1986 to which the present petitioner was also a party praying for release of the said sum. That petition No. 1064/86 was not decided until 17.1.1998. On being advised that non-payment of admitted sum of gratuity being not a part of the main petition, the civil application may not be an appropriate remedy, the petitioner filed the present petition indendently for the reliefs directing respondents Nos.4 and 5 viz. Gujarat Law Society and the college to forthwith pay the petitioner the salary for the period 15.6.1986 to 30.6.1986 and to submit the papers for payment of gratuity and pension to respondent Nos.1 and 2, who in turn be directed to place papers for such payment to respondents Nos.6 and 7 and also for directing respondents Nos. 6 and 7 viz. Accounts officer, Pension and the Treasury officer to forthwith pay with interest to the petitioner, Rs. 20,000/illegally retained by them in terms of Annexures A/7 and A/8 which are directions from the Accounts officer, Pension to the Director of Education to retain a sum of Rs. 20,000/from the amount of gratuity payable to the petitioner. No reply has been filed to this petition and nothing except pendency of the petition filed by the Gujarat Law Society and the college about release of the salary to the petitioner directly for the period mentioned above, was urged as cause of retention of amount of Rs. 20,000/- out of admitted amount of gratuity payable to the petitioner. The fact that the amount is directly payable by the State to the petitioner on submitting bill is not in dispute.

To say the least, pendency of Special civil application No. 1064 of 1986 has nothing to do with the claim of the petitioner to the gratuity which she has earned for the period she served with respondents Nos.4 and 5 on her retirement and the obligation of the respondents to make good that duty about which there was never any dispute. The amount was payable as soon the petitioner retired. Leaving aside the reasonable time for computing the amount of gratuity payable, there is no justification for retaining that amount. The petitioner cannot be held guilty of laches either inasmuch as as soon she came to know about such unwarranted retention of Rs. 20,000/- , she made application in the pending petition, which was

cited as cause for non-payment of the said sum out of the gratuity detained by respondents themselves as payable to the petitioner.

It may be noticed here that Special civil application No.1064 of 1986 came to be decided on 17.1.1998. The court noticed that by Government resolution dated 31.12.1986, Government has accepted the principle of date of superannuation to be extended to the expiry of term during which retirement age is reached. Thus, the State Government had accepted the plea of college and law society to release the salary of teaching staff upto the end of session during which one attained the age of superannuation as early as in December 1986, yet the payment of gratuity in the present case was detained on such untenable grounds. The court noticing the fact that as a result of interim order passed in this petition viz . Special civil application No. 4469 of 1997, the amount has been released, recorded that no dispute survives and disposed of, in the first instance, the petition itself.

As the petitioner had raised the claim not only to the amount of gratuity and arrears of salary for 15 days which was not paid but also laid claim to interest on account of such belated payment because the respondents had retained the amount without any plausible cause, on an application being filed by the petitioner, vide an order dated 6.4.1998 in MCA No. 302 of 1998, the order disposing of Special civil application No. 4469 of 97 was recalled and the petition was revived.

The only contention in defence that has been raised by the learned Government Pleader is that since the petition has been filed in 1997 and the entire amount of principal has been paid in terms of interim order, no relief by way of interest may now be granted as it is not payable under any of the statutory provisions.

This contention of the respondents cannot be countenanced.. The petitioner is not laying any claim to unascertained sum of damages to be determined by court, nor to any sum about the payability of which there was any dispute at any time since it became due. She is laying claim to the amount due from her employer which under law, is due to her and it constitutes the amount payable to the petitioner as soon as she retired.

It can also not be contended that pension or gratuity, the two constituents of retirement benefits are bounty or payment for gratis. The Supreme court in State of

Kerala vs . Padmanabham Nair, (1985) (1) SCC 429 declared that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become under the decision of that court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

The court again had an occasion to consider the question of liability to pay interest on delayed payment of gratuity or pensionary benefits, in the case of R. Kapur vs. Director of Inspection , (1994) 6 SCC 589. There, the Central Administrative Tribunal in a petition filed by one R. Kapur had found that the employer had withheld the amount of death-cum-retirement gratuity for non-payment of Government accommodation which, under law, could not be withheld, and allowed release of that sum with interest at the rate of 10% only. On appeal before the Supreme court, the Supreme court interfered with rate of interest relying on its earlier decision in M.Padmanabham case referred to above and increased the rate of interest from 10% to 18% considering it to be payment of interest at the current market rate compensating the employee for being deprived of his legitimate dues from the employer without any bona fide reasons.

The principle aforesaid governs the present case. The respondents having come to the conclusion that certain amount of gratuity was payable to the petitioner. withholding of that amount on the ground of pendency of the petition between the Government and the Gujarat Law Society , the immediate employer of the petitioner, was on the face of it unreasonable and unwarranted and further even awaiting till direction of the court to release that payment after 11 years of retirement, makes it a case of culpable delay in settlement and disbursement of admitted sum of gratuity and is eminently a fit case for grant of interest at the market rate. Since from 1986 to 1998, the market rate has been fluctuating, I deem it fit to grant interest at the rate of 15% from the date of three months after the date of retirement till actual date of payment which has been made during the pendency of this petition. Rule is made absolute with no order as to costs.
